

ORIGINAL
RECEIVED

TRANSCRIPT OF PROCEEDINGS

JUL 12 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

IN THE MATTER OF:

DOCKET NO. 94-10

Clayton, Missouri

DATE OF HEARING: June 21, 1994

VOLUME: 3

PLACE OF HEARING: Washington, D.C.

PAGES: 253-418

FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

JUL 12 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the matter of:

THE LUTHERAN CHURCH/MISSOURI SYNOD

MM DOCKET NO. 94-10

Clayton, Missouri

The above-entitled matter came on for hearing pursuant to Notice before Judge Arthur I. Steinberg, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 3, on Tuesday, June 21, 1994, at 9:30 a.m.

APPEARANCES:

On behalf of The Lutheran Church/Missouri Synod:

KATHRYN R. SCHMELTZER, Esquire
BARRY H. GOTTFRIED, Esquire
Fisher, Wayland, Cooper, Leader and Zaragoza
2001 Pennsylvania Avenue, NW, Suite 400
Washington, D.C. 20006-1851

On behalf of The NAACP:

DAVID HONIG, Esquire
1800 N.W. 187th Street
Miami, Florida 33056

On behalf of Mass Media Bureau:

ROBERT Z. ZAUNER, Esquire
Y. PAULETTE LADEN, Esquire
Mass Media Bureau
2025 M Street, NW
Suite 7212
Washington, DC 20554

1	I N D E X				
2	Statement by Ms. Schmeltzer				<u>Page</u> 255
3	Statement by Mr. Honig				255
4	<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
5	Ralph A. Bohlmann				
6	By Ms. Schmeltzer	270			
7	By Mr. Honig		277		
8	Paula Zika				
9	By Ms. Schmeltzer	303		343	
10	By Mr. Honig		307		
11	By Mr. Zauner		325		
12	Examination by Judge	300, 319, 341			
13	<u>E X H I B I T S</u>				
14	<u>Lutheran Church</u>	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>	<u>Withdrawn</u>
15	Exhibit No. 1	269	276		
16	Exhibit No. 3	303	306		
17	Exhibit No. 9	338	338		
18	<u>NAACP</u>				
19	Exhibit No. 1	346		351	
20	Exhibit No. 2	346		354	
21	Exhibit No. 3	346		356	
22	Exhibit No. 4	346		357	
23	Exhibit No. 5	346		399	
24	Exhibit No. 6	346		362	
25	Exhibit No. 7	346	369		
26	Exhibit No. 8	346	372		
27	Exhibit No. 9	346		376	
28	Exhibit No. 10	346	380		
29	Exhibit No. 11	346	384		
30	Exhibits No. 12 - 20 Reserved				
31	Exhibits No. 21 - 62	346			
32	Exhibit No. 63	315			
33	Exhibit No. 64	323			
34	<u>Judge's</u>				
35	Exhibit No. 2	348	348		
36	Hearing began: 9:30 a.m.		Hearing Ended: 3:25 p.m.		
37	Lunch Break Began: 12:00 p.m.		Lunch Break Ended: 1:30 p.m.		

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE STEINBERG: We're on the record. Getting a little feedback here, huh? That's okay. It's the most exciting thing that's gone on in two days, little feedback.

MS. SCHMELTZER: Your Honor, are we on the record?

JUDGE STEINBERG: Yes.

MS. SCHMELTZER: Before we start today, I do have one preliminary matter and that is that I would like to prevent the kind of outburst that we had yesterday from counsel for the NAACP. If counsel has some arguments to make, he can file a motion. We did have a motion yesterday we filed. But I don't think it's productive to this hearing to have wild allegations made that involve the ethical conduct of attorneys that are totally unbased. And I don't think it's productive to have those kind of allegations made when there are reporters in the room and the allegations have no foundation whatsoever. And I'd just ask Mr. Honig to make all such claims or motions in writing and to avoid spending an hour of our time and the Court's time in these accusations on the record.

MR. HONIG: Your Honor, may I respond?

JUDGE STEINBERG: Briefly.

MR. HONIG: If I had known that this statement was going to be made, I would have asked that the witnesses leave, because it's highly prejudicial to have to, to, to open with

1 | this type of a statement with the witnesses in the room.
2 | They, after all, have to be able to respect the questions that
3 | I'm asking. They don't know what the subject matter is. They
4 | were subject to sequestration. Your Honor, I think the record
5 | will show that I made a motion which had to include requests
6 | for injunctive relief. A request for injunctive relief cannot
7 | be submitted and in some of those requests ex parte. It was
8 | necessary for me to make those requests in the record.
9 | Counsel will have a chance to respond. I have been advised,
10 | and I will say this, that in the course of what I said
11 | yesterday, and forgive me because I didn't have sleep, I used
12 | one word that I shouldn't have used and that word was theft,
13 | and it was not appropriate and I apologize to the Court and to
14 | Ms. Schmeltzer. The point was that the, was that there had
15 | been a misappropriation of intellectual property, that would
16 | have been a better choice of words. And I stick by that, but
17 | I hope it was clear from the context that I wasn't referring
18 | to a physical theft of the document, but was misappropriation
19 | of intellectual properties. For that, I apologize to the
20 | Court. But I don't think that Paul Revere shouting loud is
21 | inappropriate. And if I shouted too loud, I'm sorry, but I
22 | don't think I did.

23 | JUDGE STEINBERG: Okay. There's one thing,
24 | yesterday when you were outlining the potential testimony of
25 | Mr. Miller, I was not taking notes and I, I forgot to take

1 notes, and I've, frankly, forgotten the three areas that he
2 was going to get into. Do, do you want the witness, the
3 witness excused?

4 MR. HONIG: I'd like the witnesses to leave, yes.

5 JUDGE STEINBERG: Okay. So why don't we have --

6 MS. SCHMELTZER: It's only, it's only --

7 JUDGE STEINBERG: There's Reverend Bohlmann.

8 MS. SCHMELTZER: But Reverend Devantier was here --

9 JUDGE STEINBERG: Yes. Reverend Devantier was here
10 yesterday.

11 MS. SCHMELTZER: He was here yesterday.

12 MR. HONIG: I don't, I don't mind Reverend Devantier
13 being here today.

14 JUDGE STEINBERG: Okay. If you would just go wait
15 out in the hall for -- this shouldn't take anymore than a
16 couple of minutes.

17 MR. HONIG: Well, there is, there is another
18 preliminary matter that I wanted to raise --

19 MS. SCHMELTZER: Will that take any length of time
20 --

21 MR. HONIG: I don't, I don't know. I don't know.
22 It might take 2 minutes, it might take 20.

23 MS. SCHMELTZER: Let me --

24 JUDGE STEINBERG: Okay.

25 MS. SCHMELTZER: All right --

1 MR. HONIG: Thank you.

2 JUDGE STEINBERG: Okay. So you said there were
3 three areas?

4 MR. HONIG: Yes. And one of those areas was how a
5 radio station persuades its advertisers to buy time, that is
6 the relative importance of specialized knowledge of a format.
7 The second area is --

8 JUDGE STEINBERG: Wait a sec.

9 MR. HONIG: Sure.

10 JUDGE STEINBERG: You said the knowledge, relative
11 importance?

12 MR. HONIG: Um-hum, of the specialized knowledge of
13 a format.

14 JUDGE STEINBERG: Okay.

15 MR. HONIG: Okay.

16 JUDGE STEINBERG: Is everybody caught up?

17 MR. HONIG: Okay. The second area, Your Honor, is
18 the qualifications that are appropriate in considering the,
19 the employment of a radio sales person. And the third area is
20 how difficult or easy it is to identify and hire qualified
21 minority in the St. Louis radio market.

22 JUDGE STEINBERG: Okay, thank you. Yes, usually I'm
23 writing like crazy, but for some reason I didn't.

24 MR. HONIG: Did you want to argue the matter now?

25 JUDGE STEINBERG: No.

1 MR. HONIG: Oh.

2 JUDGE STEINBERG: I just, I, I knew there were three
3 areas. I, I knew what one of them was. I didn't remember
4 what the other two were. I just wanted to have it in my head
5 for this afternoon.

6 MR. HONIG: Okay.

7 JUDGE STEINBERG: What other preliminary matter?

8 MR. HONIG: I, forgive me for not having had the
9 presence of mind yesterday to ask for this, but inasmuch as
10 KFUE has a copy of this tape recording of Mr. Lauher and the
11 transcript, I would like copies of both produced here and
12 would like to orally move that they be produced.

13 JUDGE STEINBERG: Ms. Schmeltzer?

14 MS. SCHMELTZER: For what purpose?

15 MR. HONIG: Because the matters contained therein
16 may include the impressions of a witness and statements of a
17 witness in connection with the issues in this case. I think
18 it's already covered by our documents production --

19 MS. SCHMELTZER: Why, he's already testified.

20 MR. HONIG: I think it's already covered by our
21 document production motion.

22 JUDGE STEINBERG: Well --

23 MS. SCHMELTZER: He's already testified. If you
24 wanted them, you should have asked for them yesterday. I said
25 I had copies.

1 JUDGE STEINBERG: Mr. Zauner --

2 MR. HONIG: And I say it should have been produced.

3 JUDGE STEINBERG: Mr. Zauner?

4 MR. ZAUNER: I agree with Ms. Schmeltzer.

5 JUDGE STEINBERG: Well, discovery is over in terms
6 of the direct cases. And I --

7 MR. HONIG: Your Honor --

8 JUDGE STEINBERG: -- and I agree that you should
9 have asked for them yesterday. Now I've excused Mr. Lauher.
10 Unless, unless Mr. Lauher is going to be produced as a
11 surrebuttal witness.

12 MR. HONIG: Your Honor, if you'll forgive me, I was
13 not aware of the existence of the transcript until yesterday,
14 and forgive me for not having had the presence of mind, my
15 focus was on the fact that it hadn't been produced any
16 earlier, which I, and I think therefore I preserved the claim
17 by saying that it should have been preserved, produced to me
18 earlier. I'm asking that it be produced to me now.

19 MS. SCHMELTZER: No, you didn't mention it at all
20 yesterday.

21 JUDGE STEINBERG: I don't, I don't remember --

22 MR. HONIG: I, I said there was, when there was
23 this, when there was the transcript and Ms. Schmeltzer said,
24 well, I, I had the transcript last night and I think I pointed
25 out I don't have the transcript from yesterday, that, that I

1 wasn't advised and it wasn't, I wasn't apprised of it.

2 JUDGE STEINBERG: Well, then, well, then how about
3 if Ms. Schmeltzer gives you a copy of the tape and the
4 transcript and you give Ms. Schmeltzer a copy of whatever
5 notes, documents, etc., Mr. Blanton has.

6 MR. HONIG: I think that's fine. I'll be happy to
7 do it.

8 MS. SCHMELTZER: Your Honor, we are going to
9 probably file the transcript with the opposition's motion, so
10 I would say they'll get it eventually.

11 JUDGE STEINBERG: Well, why don't you produce it and
12 then, but Mr. --

13 MS. SCHMELTZER: All right. But with the --
14 Mr. Lauher can't be recalled and this transcript is not coming
15 into evidence.

16 JUDGE STEINBERG: The transcript is not coming in to
17 evidence.

18 MR. HONIG: Well, but I'd like to know what they say
19 and, and, and --

20 JUDGE STEINBERG: Well, you can --

21 MR. HONIG: -- at this point, that, that issue isn't
22 before the Court.

23 MS. SCHMELTZER: Well, you could have found out what
24 was said on the transcript by interviewing the person that you
25 hired to interview Mr. Lauher.

1 MR. HONIG: And I have his notes.

2 JUDGE STEINBERG: Well, speak to, speak to me and
3 not to, and not to each other. Produce the transcript and a
4 copy of the tape. Produce Mr. Blanton's, whatever he's got in
5 his possession, you can exchange it, and I'll tell you right
6 now, if you, well, you, I'm not going to tell you right now
7 because I'm not going to rule in advance. If you seek to
8 introduce the transcript of the tape, I'll, I'll rule then.

9 MS. SCHMELTZER: If any of Mr., if, if Mr. Honig's
10 rebuttal exhibits are not stricken and if any of his witnesses
11 are going to testify, then I want all notes and transcripts of
12 the conversations, because --

13 JUDGE STEINBERG: Well, you can ask for them at the
14 appropriate time and I'll hear argument and rule. But, you
15 know, I excused Mr. Lauher and, as I said, I told you
16 yesterday at least on two occasions that you, you had a full
17 opportunity to ask your questions, and it was in your
18 discretion to ask or not to ask, and you elected not to ask,
19 and you have to live by that election. We're not, well, you
20 know, if you want to call him back as your witness, you can
21 attempt to do so and I will hear argument and I will rule.
22 But, but I think the transcript will bear me out, at least on
23 two occasions I said, I, I told you what choices were
24 available to you and, and you made your choice.

25 MS. SCHMELTZER: May I ask when do you want us to

1 produce these? I, I don't think you mentioned --

2 JUDGE STEINBERG: Well, as soon as possible.

3 MS. SCHMELTZER: I, I don't have, all I have is the
4 original tape -- want to have a dup made, and I would say that
5 the transcript was made by Mr. Lauher. I have not reviewed it
6 for accuracy.

7 JUDGE STEINBERG: All right.

8 MS. SCHMELTZER: I can't tell you how accurate it
9 is.

10 JUDGE STEINBERG: That's, you know, just those two
11 things, you know, those two items and with, you know, with
12 that --

13 MR. HONIG: Your Honor, do --

14 MS. SCHMELTZER: I have not even heard the tape, so
15 I don't even know how listen equipped --

16 MR. HONIG: Your Honor, it occurs to me that there
17 is one other matter relating to, to this. Mr. Blanton's
18 memorandum to me includes questions and his answers, and I
19 think it's fairly innocuous except for there may be a sentence
20 or two that he's written to me that are essentially beyond
21 what was in the transcript, that is they are his impressions
22 and they are privileged matters, and I would like permission
23 to review it and talk to Mr. Blanton first and be sure that,
24 that, if, if there's anything that is not out of the bag
25 that's privileged, and I'd also like to talk to the client and

1 be sure that, that I can either produce it subject to a
2 limited waiver or, or produce it redacted, or produce it in
3 camera for your inspection.

4 MS. SCHMELTZER: Your Honor, I don't think --

5 JUDGE STEINBERG: Well --

6 MR. HONIG: There's a paragraph that gives the
7 impressions of how it went. They don't know that and I don't
8 think they have a right to know that unless the client --

9 JUDGE STEINBERG: Well, I, you know, this is getting
10 awfully complicated and what I want to do is I'm going to
11 think about, I'm going to rescind my ruling, I'm going to
12 think about it for a while, and I'll let you know.

13 MS. SCHMELTZER: I would just mention --

14 JUDGE STEINBERG: I mean let me ask for what purpose
15 do you want this?

16 MR. HONIG: What purpose do I want the transcript?

17 JUDGE STEINBERG: Yes. Yes.

18 MR. HONIG: I do not know and would like to verify
19 whether the witness has said anything in the transcript,
20 written anything in the transcript, placed any emphasis in the
21 transcript that may not be just what was said, and since one
22 issue in, in determining the credibility of the witness is
23 what he exactly, he knew what exactly my clerk told him and he
24 told me, right now that's the best evidence of that. All I
25 have is the notes that my clerk --

1 JUDGE STEINBERG: Wait. Wait. Wait. I said,
2 didn't I tell you yesterday ask your 20 questions. If you
3 get, if the answer's one way, you do one thing. If the
4 answer's another way, you do another thing. You understood
5 what I meant, didn't you?

6 MR. HONIG: Yes.

7 JUDGE STEINBERG: Okay. And I meant if he, you can
8 ask him a question. If he testifies the way he told
9 Mr. Blanton, then you go on to your next question. If he
10 testifies differently, then you say wait a minute, didn't you
11 talk to Mr. Blanton and didn't you tell Mr. Blanton this,
12 that, and the other thing, and how come you're changing your
13 story now. I mean isn't, isn't that what you understood me to
14 be saying?

15 MR. HONIG: I did, Your Honor, and what I was saying
16 is --

17 JUDGE STEINBERG: And, and you, wait a minute, and
18 you chose not to ask your questions.

19 MR. HONIG: I did that.

20 JUDGE STEINBERG: So what difference does it make
21 what the transcript says, at this stage of the game?

22 MR. HONIG: Because, first, the witness testified,
23 and I'll admit I was a little perturbed, but that he did not
24 take this to a stenographer, he typed it himself. I don't
25 know what it says. Maybe it's, you know, and until I see it,

1 I won't know.

2 JUDGE STEINBERG: Well, what difference does it make
3 who typed it. It's, at this point --

4 MR. HONIG: Did you write notes on it, are there --
5 are there stuff in brackets?

6 MS. SCHMELTZER: No, there were --

7 JUDGE STEINBERG: Who, who cares? At this stage of
8 the game, you had your opportunity, Mr. Lauher was here, he
9 would have been here till this morning if necessary.

10 MR. HONIG: Well --

11 JUDGE STEINBERG: And you had your opportunity to
12 ask him whatever you wanted to ask him and you didn't.

13 MR. HONIG: Your Honor?

14 JUDGE STEINBERG: You elected not to, didn't you?

15 MR. HONIG: I did, Your Honor, and --

16 JUDGE STEINBERG: And now you, now, and now are you
17 changing your mind?

18 MR. HONIG: No, I'm not changing my mind. There are
19 two purposes for which they're relevant and I identified two
20 and I agree with you that one of them I may have precluded.
21 But, Judge, I think we're trying to get all the evidence out
22 here in the record, to lay it on the table. This isn't trial
23 by ordeal, although I feel that I'm under one. And if I made
24 a mistake and forgot to ask specifically yesterday give me the
25 transcript, when I just learned it existed, I'm sorry. I'm

1 asking today.

2 JUDGE STEINBERG: Okay. Let me have one, one
3 comment from Ms. Schmeltzer, one from the Bureau, and then
4 we'll move on with Reverend Bohlmann.

5 MS. SCHMELTZER: Well, I think the discussion
6 illustrates that the production of the transcript would be a
7 futile measure. It's unrelated to Mr. Lauher's testimony.
8 Mr. Honig had full opportunity to ask for the transcript
9 yesterday when arguably it might have been admissible to him,
10 but he chose not to. And he, he could have asked Mr. Lauher
11 for a copy of the transcript. He knew that Mr. Lauher taped
12 the interview. He could have asked Mr. Lauher for a copy of
13 the tape. I just think this last minute request is, is
14 ridiculous.

15 MR. ZAUNER: Well, I agree with what Your Honor
16 said. I, I think that there was an opportunity, be it for
17 examination of Mr. Lauher. Mr. Honig knew what Mr. Lauher
18 said to his law clerk. I mean, after all, his law clerk was
19 the one who put the questions to Mr. Lauher and gave Mr. Honig
20 a detailed report on, on what was said. And Mr. Honig was in
21 a position to cross-examine Mr. Lauher upon what he said to
22 the law clerk and he chose not to. And I think that's the end
23 of the matter.

24 JUDGE STEINBERG: As I said, I will think about this
25 and I'll give you my ruling when I'm ready to rule. Anything

1 else from anybody?

2 MR. HONIG: Yes. Your Honor, one of the exhibits
3 that we exchanged was illegible and I now have legible copies
4 and would like to exchange these --

5 JUDGE STEINBERG: Okay, why don't you, that's number
6 four, right?

7 MR. HONIG: It's number four.

8 JUDGE STEINBERG: Okay. Why don't you pass it
9 around and -- I don't think, I don't think the report has your
10 exhibits, does she?

11 MR. HONIG: Oh, they're over there, we're still
12 tabbing them.

13 JUDGE STEINBERG: Okay. Why don't you give those
14 back to Mr. Honig then and give, when, when we get to it, the
15 reporter will get a whole set. Okay, why don't we, somebody
16 get Reverend Bohlmann. Send, we can send Mr. Zaragoza for
17 Reverend Bohlmann.

18 MR. ZARAGOZA: Good morning, Your Honor.

19 JUDGE STEINBERG: Good morning. We can go off the
20 record while he's --

21 (Brief Recess.)

22 MS. SCHMELTZER: The Church calls
23 Reverend Ralph Bohlmann to the stand.

24 JUDGE STEINBERG: Okay. Dr. Bohlmann, raise your
25 right hand, please.

1 (Whereupon,

2 RALPH A. BOHLMANN

3 was called as a witness, and after having been duly sworn,
4 testified as follows:)

5 JUDGE STEINBERG: Okay, please be seated. And if
6 you would, could you state your name and address and phone
7 number for the record?

8 WITNESS: My name is Ralph Bohlmann. My address is
9 St. Louis, Missouri. And my phone number there is 314-821-
10 7781.

11 JUDGE STEINBERG: Let me just, before we start,
12 let's go off the record.

13 (Brief recess.)

14 JUDGE STEINBERG: Okay, we're back on the record.
15 Ms. Schmeltzer?

16 MS. SCHMELTZER: Yes. Your Honor, I'd like to have
17 marked for identification as Church Exhibit 1, a document
18 entitled testimony of Reverend Ralph A. Bohlmann. This
19 consists of eight pages of testimony and a signed declaration,
20 and seven attachments.

21 JUDGE STEINBERG: Okay, the document described will
22 be marked for identification as Church Exhibit 1.

23 (Whereupon, the document referred to
24 as Church Exhibit No. 1 was marked
25 for identification.)

DIRECT EXAMINATION

BY MS. SCHMELTZER:

Q Dr. Bohlmann, do you have a copy of Church Exhibit No. 1?

A Yes, I do.

Q Okay. And do you have any corrections or changes to make to the testimony?

A No.

Q Is your testimony true and correct to the best of your knowledge, information, and belief?

A Yes, it is.

MS. SCHMELTZER: Your Honor, I would move the receipt of Church Exhibit 1.

JUDGE STEINBERG: I have a, just a clarifying thing. On page two, fifth line from the bottom, the letters LCMS, that's Lutheran Church Missouri Synod, right?

MS. SCHMELTZER: That's correct.

JUDGE STEINBERG: And then, I may be wrong about this, but on page, this is really picky, but on page eight, it says see attachment seven, on the third line from the bottom?

MS. SCHMELTZER: Right.

JUDGE STEINBERG: Should that be after the word community, a couple of lines up? I told you it was really picky. If you want to think about --

MS. SCHMELTZER: Attachment seven has that quote and

1 I think it also has the next line.

2 JUDGE STEINBERG: Okay. We'll just leave it the way
3 it is.

4 MS. SCHMELTZER: But it may not -- it should, I
5 think it should be after the word community -- to be accurate.
6 Yes, I think you're correct.

7 JUDGE STEINBERG: Okay. So we'll just leave it the
8 way it is with my comment that, okay, yes. The document's
9 been moved for admission. Any objections?

10 MR. HONIG: I do, Your Honor. Unless the Bureau
11 wants to go first with objections?

12 JUDGE STEINBERG: No, we'll let Mr. Honig go first.

13 MR. HONIG: Okay. I have no objection to paragraph
14 one and two, Your Honor. I object first to paragraph three.
15 This is, I'm not certain the purpose that paragraph three is
16 offered for. It's, it, it's an understandable, although
17 perhaps self-serving statement. I don't see how Your Honor
18 could ever make findings based on it or what it has to do with
19 the issues in this case, which go to the conduct of radio
20 stations and not to the religious, to, to an aspect of the
21 religious beliefs or liturgy of the church itself.

22 MS. SCHMELTZER: Well, I think the Church's -- is
23 equally related to the operation of the radio station,
24 particularly the AM station and, to some extent, the FM
25 station. So I think it is important for the Commission to

1 have this evidence in the record.

2 JUDGE STEINBERG: Mr. Zauner or Ms. Laden?

3 MS. LADEN: I would normally, I think, agree with
4 Mr. Honig, but there are several exhibits here, one of those
5 ours which is a report on the operation of KFUD and one which
6 is an exhibit in, in the NAACP's exhibits, which it's a report
7 to the standing committee, I believe it's Exhibit 27, which it
8 covers some of the same things, and I think that it's
9 marginally relevant.

10 MR. HONIG: Your Honor, if I may?

11 JUDGE STEINBERG: Well, no, no, I don't want, we'll
12 have an objection, a response, and then I'll rule.

13 MR. HONIG: Oh, I need --

14 JUDGE STEINBERG: No, no rebuttal.

15 MR. HONIG: Okay.

16 JUDGE STEINBERG: I'm trying to move things along.
17 I, there's a lot in this exhibit which I view as background,
18 just as many of the Bureau's exhibits which were admitted
19 yesterday were background, and I consider this paragraph just
20 to be background. How, how it will be used in findings,
21 whether it will be used in findings will be up to you people,
22 and whether it'll be used in, in the decision will be up to
23 me, but I think it is, in terms of background, relevant to
24 know what the church's mission is, just like I'm sure you're
25 going to have objections later on to some of the background

FREE STATE REPORTING, INC.

Court Reporting Depositions

D.C. Area (301) 261-1902

Balt. & Annap. (410) 974-0947

1 material we, and I just view that as background. So you might
2 want to take that under advisement. So I'm, I'll overrule the
3 objection.

4 MR. HONIG: Judge, can I get a clarification of some
5 of the, of, I, I just want to be sure that, that, that the
6 status of our rebuttal exhibits is, is, is understood. That
7 by offering a rebuttal exhibit for identification, which we're
8 in effect doing, I don't intend thereby to convey that I
9 intend, that there is anything to rebut or to offer it in
10 evidence. I may not offer all these into evidence. They're
11 just there in case there's something that's admitted that
12 needs to be rebutted.

13 JUDGE STEINBERG: That's okay.

14 MR. HONIG: Okay. The next objection I have relates
15 to paragraphs 5 through 14. Your Honor, understanding your
16 ruling, if this is background, I, I suppose it's, it's
17 unobjectionable. The difficulty is that much of this, it's
18 much longer than just would be needed to provide background,
19 which I think paragraph two does adequately. I don't think
20 that the communication that contemplates this, this type of,
21 of, of archaic chronology of matters long before the license
22 term. Section 304, another archaic provision, originally
23 spoke to no, in effect, no squatters rights because of the use
24 of the ether or previous use of same, was intended to preclude
25 exactly this type of evidence from being considered in

1 determining the renewal in a, at a particular time, that is
2 that because we have, have seniority as a licensee, it's a,
3 it's a factor in, in your favor.

4 JUDGE STEINBERG: Mrs. Schmeltzer?

5 MS. SCHMELTZER: Your Honor, this is a -- relief
6 case. The only place I'm aware of where the Commission is
7 designated the Church's license renewal application for
8 hearing and the Commission is trying to determine the
9 applicability of the HDO (Phonetic) rules to the Church. One
10 of the reasons that the, the case was designated for hearing
11 was the Commission appeared to think there was something
12 untoward about the relationship between the seminary and the
13 church. That relationship has been a very long, historical
14 relationship, and I think that history is extremely important
15 to get before the Commission. Obviously, when this case was
16 designated, the Commission didn't go back through its record,
17 some of which we have applied here, attachments here, to
18 determine how this church came to, how the station came to be
19 and what the relationship of the seminary and the church was.
20 I think this is very critical to a key issue in this case.

21 JUDGE STEINBERG: Ms. Laden?

22 MS. LADEN: I would agree --

23 JUDGE STEINBERG: Okay. I'll, I'll overrule the
24 objection. I view this as, this is, these, this portion I
25 view as having two purposes. Number one is, again,

1 background. I, I doubt that, that a claim of squatters rights
2 is going to be made. That, you know, that's, I, I don't think
3 that, that, first of all, let me just leave it, I don't, I
4 don't think it will be made. It might be made and then I'll
5 have to grapple with it. But secondly is the Commission in
6 the HDO mention Concordia Seminary and the relationship
7 between the, the station and Concordia Seminary in, how, how
8 can I say this, in a not very favorable light. They, I, I
9 think. They, they kind of said, yes, you've, you've got this
10 relationship, but you really, either you really shouldn't or
11 etc., etc. And this, this is, I'm paraphrasing, I haven't
12 read the HDO in almost 24 hours, so I may have forgotten, but
13 I think that the, that this section gives a lot of the
14 background in the relationship and the development of the, of
15 the relationship between the seminary and the church, and this
16 is relevant to matters that the Commission determined might
17 want inquiry in this hearing. So I'm overruling that
18 objection.

19 MR. HONIG: Finally, Your Honor, I object to
20 paragraph 15. I'm sorry, I don't object to the first sentence
21 of paragraph 15. I object to the second sentence of
22 paragraph 15. I don't think this witness is offered as, as a
23 character witness for individuals or has shown that he has,
24 that the scope of his duties is, is to, I'm sorry, strike
25 that, that he's offered as a character witness for these

1 particular individuals. Their character isn't the issue in
2 this case, it's the licensee's.

3 MS. SCHMELTZER: This point of evidence came in, in
4 a -- case, and also because Dr. Bohlmann was relying on
5 Paul Devantier, Dennis Stortz in a number of instances, I
6 think it is relevant to have this testimony and he could be
7 cross-examined on it.

8 JUDGE STEINBERG: Let me ask Dr. Bohlmann. Look at
9 paragraph 15, at the last paragraph before your signature, the
10 last sentence. Does this sentence reflect your opinion of
11 these two people?

12 WITNESS: Yes.

13 JUDGE STEINBERG: Okay. It's, it's opinion. You
14 can cross-examine on the basis for the opinion. And so that
15 objection's overruled. Any other?

16 MR. HONIG: No, Your Honor.

17 JUDGE STEINBERG: Ms. Laden?

18 MS. LADEN: We don't, we would have objected to the
19 last sentence for the reasons that Mr. Honig, but I understand
20 your ruling, so --

21 JUDGE STEINBERG: Okay. Exhibit 1, Church Exhibit 1
22 is received.

23 (Whereupon, the document marked as
24 Church Exhibit No. 1 was received
25 into evidence.)